IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 25, 2002 Session

STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES v. D.G.B. and C.B.

Appeal from the Juvenile Court for Bradley County
No. 7087-J C. Van Deacon, Jr., Judge

FILED SEPTEMBER 10, 2002

No. E2001-02426-COA-R3-JV

In this termination of parental rights case, the trial court found – by clear and convincing evidence – that there are multiple grounds for terminating the parental rights of the mother ("D.G.B.") and father ("C.B.") of J.E.B. (DOB: October 27, 1986). The trial court, however, refused to terminate their parental rights because it determined that the evidence fails to show, in a clear and convincing manner, that termination is in the "best interests" of the subject child. *See* T.C.A. § 36-1-113(c)(2) (2001). The court directed the Department of Children's Services ("DCS") to develop a plan of care for the removal of the child from Bradley County to Carter County, the present home of the parents, "then to be provided services toward reunification." The Guardian Ad Litem for J.E.B. appeals, contending that the court erred in refusing to terminate the parents' parental rights and in ordering the transfer of the child to Carter County. We find the evidence preponderates against the trial court's determination that termination is not in the best interests of the child. On the contrary, we find clear and convincing evidence that it is in the child's "best interests" to terminate the parental rights of D.G.B. and C.B. Accordingly, we reverse the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

Mitchell A. Byrd, Chattanooga, Tennessee, Guardian Ad Litem for J.E.B.

Paul G. Summers, Attorney General and Reporter, and Douglas Earl Dimond, Assistant Attorney General, for the appellee, State of Tennessee Department of Children's Services.

Arthur Bass, Cleveland, Tennessee, for the appellees, D.G.B. and C.B.

OPINION

I.

J.E.B. came into the custody of DCS on October 13, 1995, at the age of almost nine. DCS's temporary custody was memorialized by an order of the Bradley County Juvenile Court entered the same date. Following a number of hearings on various aspects of the child's care, the trial court was presented, on March 23, 2000, with the petition of DCS to terminate the parental rights of D.G.B. and C.B. At the time, the child had been in foster care, pursuant to DCS's custody, for some four years and five months.

The evidence below reflects that DCS was initially prompted to act in this case because J.E.B. had been subjected to severe child abuse at the hands of his parents. At the final evidentiary hearing below, a number of witnesses testified, touching on the grounds for termination alleged in the petition. A special education teacher of J.E.B. testified that the child transferred to her school on October 11, 1995. The next day, the teacher noticed bruising on J.E.B.'s upper thighs. Upon further examination, which the child permitted, the teacher discovered extensive bruising on J.E.B.'s legs and buttocks. The child told his teacher that the bruises were caused by his father whipping him with a coat hanger. At this point, the teacher took some photographs of the bruising and contacted DCS regarding her findings.

J.E.B.'s DCS case manager testified that the child had described years of abuse and neglect. Specifically, J.E.B. told his case manager that his parents would leave him alone in the family automobile all day while they worked at a local flea market. During this time, the child was left with nothing to eat or drink, and he was unable to go to the bathroom.

The psychologist who treated J.E.B. following the latter's removal from his parents' home testified that the child has an I.Q. of 53, bordering on mild-to-moderate retardation. In addition, he suffers from visual, auditory, and speech impairments. The psychologist introduced into evidence numerous drawings done by J.E.B., which, according to the psychologist's testimony, showed that the child had been physically abused by his father and that he was intensely afraid of his father. After approximately one year of counseling, J.E.B. revealed that he had been orally sodomized by his father and sexually abused by his mother as well. J.E.B. gave graphic descriptions of the whippings he received at the hands of his father.

In her psychological evaluation of J.E.B., the psychologist stated that the child's "poor performance skills" with respect to his I.Q. indicated a "pervasive neurological deficit or one who has had *very little* nurturing and enrichment, or who has been severely limited in his access to his environment." (Emphasis in original). She further stated that some of J.E.B.'s drawings might suggest that the child is "*quite traumatized* in regard to the abuse events." (Emphasis in original). At the conclusion of her evaluation, the psychologist recommended "that on-going visitation with [J.E.B.'s] family of origin be terminated due [to] the high level of trauma that this child has sustained, and the fact that [the child] is already tending to assume responsibility for the physical abusive acts."

Psychological evaluations of both D.G.B. and C.B., performed by another professional, were introduced at the hearing. C.B. was diagnosed as having "major depression with psychosis" and "paranoid personality disorder," and it was recommended that he receive psychiatric treatment. D.G.B. was diagnosed with "shared psychotic disorder, dominantly paranoid." Based upon these diagnoses, the evaluating psychologist stated that C.B. was "not capable of parenting in a safe manner due to his severe mental disturbance" and recommended that "he have no contact with [J.E.B.] unless the visit is supervised." With respect to D.G.B., the psychologist noted that "it is apparent that this person has significant psychological problems. It is felt that there is significant potential risk to [J.E.B.] if returned to this individual."

J.E.B.'s psychologist agreed with the foregoing assessment and opined that placing the child in the physical and legal custody of his parents would pose a risk of substantial harm to the physical and psychological welfare of the child.

II.

Following a hearing on March 8, 2001, the trial court rendered its decision from the bench. Because we disagree with the trial court's ultimate decision not to terminate the parents' parental rights, and because we believe those remarks show, clearly and convincingly, that termination is in the best interests of J.E.B., we deem it appropriate to quote extensively from the trial court's remarks:

> ...I am convinced by clear and convincing evidence that the parental rights of [D.G.B. and C.B.] should be terminated, but for the fact that I don't find it would be in the best interest of the child.
>
> The most compelling argument is that which [counsel for the parents] stated. Candidly, we are dealing with a child who has a 53 IQ, suffers from mild retardation and has visual as well as auditory impairment. The child has been the victim of physical and sexual abuse administered by the father, who has been described as mildly depressed or psychotic, but whose condition has apparently improved according to [parents' expert witness], whose testimony I accredit and for whom I have the highest regards. I find that neither of these parents are up to the standards necessary to provide for the care of this child on a day-to-day basis.
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> * * *
>
> ...I find that the State has bore [sic] their burden with regard to the issues, establishing grounds for termination and by clear and convincing evidence there is absolutely no doubt that by her aiding and abetting and her failure to intervene on behalf of this child,

[D.G.B.] is just as guilty of abuse as [C.B.], who is in the eyes of this Court the perpetrator of severe child abuse.

...we all know there is a fine line between discipline and abuse, between correction and child abuse. And in this case there is no doubt in my mind that this child was the victim of that type of abuse by parents and the guardians, by [D.G.B. and C.B.], who were mentally incompetent to provide the kind of care and supervision that the child needed and who even to this day are so impaired as to remain unlikely to be able to provide or assume or resume the care and responsibility for this child. I find those facts beyond a reasonable doubt and to a moral certainty. For anybody who wants to review this, this is the standard which the Court applies.

* * *

...But I find that there has been a persistence of conditions that led to the removal that has not been satisfied because of the obvious inability of [D.G.B. and C.B.] to work at the same level of functioning that most citizens do. They are handicapped. That is nothing to be ashamed of. We all suffer handicaps.

* * *

It would be very easy for me to find, because of these circumstances which I find to be proven beyond a reasonable doubt, it would be easy for me to say obviously it would be in the best interest of this child to terminate parental rights and to let this child be put up for adoption, but given the record, I do not find that to be the case.

This child suffers from mild retardation, a 53 IQ with visual and auditory impairment problems and the need for behavior intervention. This child is beyond the ability of these parents to provide for and to establish a meaningful relationship without the help of the Department of Children's Services.

The goal is not to punish parents, but to provide for children. I find that a meaningful relationship can be established if the child resides in the same community with the parents, and I know of no impediment for this child to be moved to Carter County and provided for.

> After all, he's 14 years of age. I do not think it would be beneficial for this child to have the only tie severed that he is likely to have for the rest of his life and that is that tie to father and mother. Even though in the past he's been the victim of their abuse, I still find the efforts that [D.G.B.] made, even in the face of the voluntary absence of [C.B.], her efforts are such that I must accredit them and I must find that it is not in the best interest of this child to have that relationship terminated.
>
> One of the standards is what the effective change of caretakers and physical environment is likely to have on the child's medical and emotional condition. I think it will be much more traumatic for the child when he reaches 18 to find himself out on the street, and since he is a special needs child – and that is the finding of this Court, that the child is a special needs child and will continually – until his conditions have been improved, until he can provide for himself, he is going to be in the custody of the Department of Children's Services.
>
> And given the testimony of [DCS's expert witness] and [parents' expert witness], it would be more beneficial for him to have a relationship supervised by the State in an appropriate manner and level of conduct, than it would be to terminate the relationship and not be able to be adopted and not have a father and mother, but to be placed in limbo and tossed upon that sea of neglect that we often find among young adults, adults who are handicapped and receiving benefits from the government, but none of the milk of human kindness, which I think [D.G.B.] really genuinely has for her child.
>
> So with all that having been said, I find that grounds exist, but I do not find it in the best interest of this child given his age and condition to have that relationship terminated by order of this Court, and I refuse to do so. But I do order the Department to develop a plan for this child to be transferred to the care of the Department in Carter County and there to be provided those services necessary to, if possible, effectuate a reunification, because that wasn't done in Bradley County.

The trial court reiterated its rulings following a later hearing on December 17, 2001:

> That the child had been a victim of physical and sexual abuse in the past. I found that neither of the parents and I ruled on those standards necessary to provide the kind of care that the child needed on a day-

to-day basis. However, I further found that she had aided and abetted in failing to provide and protect her child, and was in fact a party to the child abuse as a result of that.

However, I also found that they were incompetent to provide care and supervision for the child, and that they are impaired to – probably to this day, at least on March 29th, I believe, or March the 8th, and that that impairment was going to continue, and that they would never be able to provide or be responsible for the child. However, I found that the Department of Children's Services had failed in it's [sic] duties to provide the kind of management services that this case needed.

That the abandonment, that they sought to use as the basis for terminating parental rights or at least aided and abetted by the Department, simply because of the lack of sufficient case management services. And the overload situation that was used to keep upon those case managers. And I did not find that they were going to born [sic] the burden with regard to sustaining that petition to terminate parental rights. The termination of parental rights requires a finding by clear and convincing evidence. But first of all, that there are grounds that exist for termination.

And secondly, before you can actually terminate it has to be – that termination has to be in the best interest of the child. And given the factual situation in this case, I found that they had not born [sic] that burden; that it was not in the best interest of that child to have those rights terminated. Even though the years of the child are beyond the ability for the parents to provide or to do without the support of the Department of Children Services to establish a meaningful relationship.

However, I did find a meaningful relationship and probably the only relationship – father and mother, child relationship could be established if the child resided in the same community with the parents. I found that I knew of no impediment to the child removed by the Department to the County, to Carter County, I should say, where the parents lived and were in fact receiving support from their church community. And with that kind of support there was at least an opportunity for there to be a meaningful relationship in the future.

We said this child was a special needs child and would continue to need that kind of a relationship. I made a finding that it was in the best interest of the child and beneficial to him to have a relationship

> supervised by the State in opposition to what had been approved in this case. I know that he needed to be in a [sic] appropriate manner and as far as the contact, I made this finding: "The Court finds it to be in the best interest of this child and beneficial to him to have a relationship supervised by the State in an appropriate manner and level of contact."
>
> Now, that rather than terminating the relationship and not being able to be adopted, and not having a father and mother, that would be nothing more than placing this child in limbo and subjecting him to a sea of neglect as an adult. So I made a finding that [D.G.B.] genuinely cared for the child, and she would be given the benefit of those services that the State should have been offering over the previous six year term that this child has been in State custody.

III.

Most appellate decisions in this state dealing with the issue of termination of parental rights state the well-recognized constitutional principle that a parent has a non-absolute right to the care, custody and control of a minor child. ***In re Drinnon***, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). We say "non-absolute" because it is clear beyond any doubt that these rights are subject to termination if a ground for such action is established under the statutory scheme pertaining to termination. ***Santosky v. Kramer***, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). Our statutory scheme on the subject requires two distinct, if related, findings, by clear and convincing evidence:

> (c) Termination of parental or guardianship rights must be based upon:
>
> (1) A finding by the court by clear and convincing evidence that the grounds for termination or [sic] parental or guardianship rights have been established; and
>
> (2) That termination of the parent's or guardian's rights is in the best interests of the child.

T.C.A. § 36-1-113(c)(1) – (2) (2001).

Since a decision to terminate parental rights affects fundamental constitutional rights, we are required to apply a higher standard of proof than in the typical civil proceeding. *See* ***O'Daniel v. Messier***, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). Before a court can terminate a parent's parental rights, the court must make the required findings "by clear and convincing evidence." T.C.A. § 36-1-113(c). The "clear and convincing evidence" standard "eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence."

O'Daniel, 905 S.W.2d at 188. "This heightened standard...serves to prevent the unwarranted termination or interference with the biological parents' rights to their children." ***In re M.W.A.***, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

In the instant case, the evidence and the trial court's findings bring the following statutory grounds for termination into play:

> (3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6)months and:
>
> (i) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
>
> (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
>
> (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

T.C.A. § 36-1-113(g)(3)(A) (2001).

> The parent...is found by the court hearing the petition to terminate parental rights...to have committed severe child abuse [as defined in T.C.A. § 37-1-102(b)(21)] against the child who is the subject of the petition...

T.C.A. § 36-1-113(g)(4) (2001).

> (21) "Severe child abuse" means:
>
> (A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death;
>
> (B) Specific brutality, abuse or neglect towards a child which in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe

> depression, severe developmental delay or retardation, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct; or
>
> (C) The commission of any act towards the child prohibited by §§ 39-13-502 – 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child;

T.C.A. § 37-1-102(b)(21) (2001).

> (8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child.
>
> (B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:
>
> (i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future, and
>
> (ii) That termination of parental or guardian rights is in the best interest of the child.

T.C.A. § 36-1-113(g)(8)(A) – (B) (2001).

IV.

The trial court found that each of the aforesaid three grounds for termination is shown by clear and convincing evidence. The evidence does not preponderate against these findings. *See* Tenn. R. App. P. 13(d). In fact, D.G.B. and C.B. do not argue strenuously to the contrary. They focus their attention on the second of the two required findings, *i.e.*, clear and convincing evidence "[t]hat termination of the parent's...rights is in the best interests of the child." T.C.A. § 36-1-

113(c)(2).[1] Since this is the real issue in this case, we will now address the concept of the "best interests"of J.E.B.

V.

The concept of the "best interests" of a child as set forth in T.C.A. § 36-1-113(c)(2) as well as the identical concept found at T.C.A. § 36-1-113(g)(8)(B)(ii) are addressed in the statutory scheme as follows:

> (i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:
>
> (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
>
> (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
>
> (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
>
> (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
>
> (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
>
> (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

[1] T.C.A. § 36-1-113(g)(8)(A) & (B) pertaining to a parent who "is mentally incompetent to provide for the further care and supervision of the child" contains a specific requirement that the court find by clear and convincing evidence "[t]hat termination...is in the best *interest* of the child." Because of the overriding reach of T.C.A. § 36-1-113(c)(2), it would appear that T.C.A. § 36-1-113(g)(8)(B)(ii) is redundant.

> (7) whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
>
> (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
>
> (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

T.C.A. § 36-1-113(i)(1)-(9) (2001). While the "best interests" concept is distinct and separate from that of the concept of a ground for termination, it is clear that the concepts are related and that evidence bearing on one tends to "bleed over" into the other.

We now proceed to examine the evidence in light of the relevant "best interests" provisions.

In its order, the trial court found that, as of the date of the termination hearing, the parents of J.E.B. were so impaired that it was unlikely that they would ever be able to properly care and provide for their child. *See* T.C.A. § 36-1-113(i)(1). Further, the court opined that the conditions which led to the child's removal still persisted and that the child would remain in state custody until he was able to provide for himself. *See* T.C.A. § 36-1-113(i)(2).

The parents' right to visitation with the child was terminated by court order dated November 7, 1996. *See* T.C.A. § 36-1-113(i)(3). The trial court found that a meaningful relationship between the parents and the child could not be established without the assistance of DCS. *See* T.C.A. § 36-1-113(i)(4). Indeed, the trial testimony revealed that the child was afraid of his parents.

J.E.B. has now been in foster care for almost seven years. He has been the victim of severe child abuse, as found by the trial court. Therefore, it is unlikely that a further change in caretakers and physical environment would, at this point, negatively impact his emotional, psychological, or medical condition. *See* T.C.A. § 36-1-113(i)(5).

In addition to the physical and sexual abuse of the child at the hands of his father, the court found that the child's mother was equally guilty of the abuse, as she failed to intervene on the child's behalf. *See* T.C.A. § 36-1-113(i)(6). As for the ability of the parents to effectively provide for the child, the trial court found that the father had been diagnosed as "mildly depressed or psychotic." Although the court noted that the father had appeared to improve with counseling, it stated that both

parents are mentally incompetent to provide for the care and supervision of the child. *See* T.C.A. § 36-1-113(i)(7) & (8).

The trial court did not address "[w]hether the parent[s] ... [had] paid child support," and there is no evidence in the record before us regarding this matter. *See* T.C.A. § 36-1-113(i)(9).

VI.

The trial court found, "beyond a reasonable doubt and to a moral certainty," that the parents

> were mentally incompetent to provide the kind of care and supervision that the child needed and who even to this day are so impaired as to remain unlikely to be able to provide or assume or resume the care and responsibility for [J.E.B.]

The court stated "that neither of these parents are up to the standards necessary to provide for the care of this child on a day-to-day basis."

The trial court later opined "that [the parents] would *never* be able to provide or be responsible for [J.E.B.]." (Emphasis added). The evidence does not preponderate against these findings. There is nothing in the record to suggest that this child, on the one hand, and his parents – who apparently are still together – will ever *live together* in a parent-child relationship. The trial court found as much and the evidence does not preponderate to the contrary.

The trial court concluded that, because of J.E.B.'s age and his mental and physical impairments, he was not adoptable. There is no direct evidence to support the court's finding of unadoptability. Certainly, it is likely to be considerably more difficult to place J.E.B. with adoptive parents than say an infant with no mental or physical problems; but this does not mean that such placement is impossible. We all know from our life experiences that there are people who, because of religious faith or simply because of the goodness of their humanity, are willing to adopt a child such as J.E.B., even with all his problems and despite his relatively advanced age. This record does not support a finding that adoption is not *possible* in J.E.B.'s case.

The trial court was of the opinion that a "meaningful relationship" could be developed between J.E.B. and his parents with the help of DCS. The court apparently believed that even as bad as these parents have been, a "relationship" with them was better than terminating the parent-child connection. However, it is clear from the court's remarks that it did not contemplate J.E.B. would ever again live with his parents during his minority, despite the "reunification" language of the judgment appealed from.

The legislature has expressed a clear intent with respect to children such as J.E.B.:

> (a) The primary purpose of this part is to protect children from unnecessary separation *from parents who will give them good homes and loving care*, to protect them from needless prolonged placement in foster care and the uncertainty it provides, and to provide them a reasonable assurance that, if an early return to the care of their parents is not possible, they will be placed in a permanent home at an early date.

T.C.A. § 37-2-401(a)(2001) (emphasis added). In the instant case, the trial court found – and the evidence does not preponderate to the contrary – that "an early return to the *care* of their parents" was not possible. ***Id***. This it seems to us is the key to this issue. The legislative intent is not simply to establish a "meaningful relationship" between a child and his or her parents; it is much more than that. It is to return the child to the *care* of his parents. This goal is clearly reflected throughout the statutory scheme. *See, e.g.*, T.C.A. §§ 36-1-113(g)(3)(A)(i) ("safe return to the care of the parent(s)"), 36-1-113(g)(3)(A)(ii) ("can be safely returned to the parent(s)"), 36-1-113(g)(8)(A) ("to provide for the further care and supervision of the child"), 36-1-113(g)(8)(B)(i) ("provide for the further care and supervision of the child" and "able to assume or resume the care of and responsibility for the child"), 36-1-113(i)(1) ("to be in the home of the parent"), 36-1-113(i)(7) ("to care for the child in a safe and stable manner"), and 36-1-113(i)(8) ("safe and stable care and supervision for the child").

We conclude that the trial court utilized the wrong legal standard in determining whether it was in the "best interests" of J.E.B. to terminate the parent-child relationship. When the evidence is evaluated in the context of T.C.A. § 36-1-113(i)(1)-(9), we find clear and convincing proof that termination is in the "best interests" of J.E.B. Since the proof shows that J.E.B. will never be returned to the "care" of his parents during his minority, the development of a "relationship," without more, is an insufficient basis to support a finding that it is not in the best interest of J.E.B. to terminate his parents' parental rights. Furthermore, termination will permit DCS to use its best efforts to place this child in a loving home with adoptive parents.

VII.

The issue raised by the Guardian Ad Litem with respect to the trial court's judgment directing the transfer of J.E.B. from Bradley County to Carter County is rendered moot by our decision. Accordingly, we do not reach it.

VIII.

The judgment of the trial court is reversed. Costs on appeal are taxed to D.G.B. and C.B. This case is remanded to the trial court for such proceedings, if any, as may be necessary, consistent with this opinion.

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CHARLES D. SUSANO, JR., JUDGE